

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule LSA Document # 13-455

DIGEST

Amends 410 IAC 12-1 to update the rule to include the latest versions of the National Institute of Standards and Technology (NIST) handbooks to ensure consistency within Indiana and throughout the United States. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

410 IAC 12-1-1.1; 410 IAC 12-1-1.2; 410 IAC 12-1-1.3; 410 IAC 12-1-1.4; 410 IAC 12-1-1.5; 410 IAC 12-1-2; 410 IAC 12-1-5; 410 IAC 12-1-6; 410 IAC 12-1-7

SECTION 1. 410 IAC 12-1-1.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-1.1 Weighing and measuring devices

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.1. Handbook 44: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, ~~1998~~ **2014** edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, excluding paragraph S.5. of Section 3.30, is hereby incorporated by reference as requirements of the Indiana state department of health for weighing and measuring devices. However, paragraph UR 2.2 of Section 3.31 shall apply only:

- (1) to those vehicle tanks used:
 - (A) for the measurement and delivery of petroleum products; ~~or~~
 - (B) liquid agricultural chemicals; or
 - (C) for bulk delivery of water and equipped with a ticket printer; ~~on or before the effective date of this rule; and~~
- (2) to all new vehicle tanks used for the measurement and delivery of:
 - (A) petroleum products; ~~or~~
 - (B) liquid agricultural chemicals; or
- (3) for bulk delivery of water. ~~after the effective date of this rule.~~

The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained ~~by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328.~~ **at the National Institute of Standards and Technology web site:**

<http://www.nist.gov/pml/wmd/pubs/hb44-14.cfm>. (*Indiana State Department of Health; 410 IAC 12-1-1.1; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1072; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

SECTION 2. 410 IAC 12-1-1.2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-1.2 Packaging and labeling

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.2. Section IV (A), entitled Uniform Packaging and Labeling Regulation, of Handbook 130: Uniform Laws and Regulations **in the Areas of Legal Metrology and Engine Fuel Quality, 1998 2014** edition, adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology, is hereby incorporated by reference as requirements of the Indiana state department of health for packaging and labeling. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained ~~by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328.~~ **at the National Institute of Standards and Technology web site: <http://nist.gov/pml/wmd/pubs/hb130-14.cfm>.** (*Indiana State Department of Health; 410 IAC 12-1-1.2; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1072; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

SECTION 3. 410 IAC 12-1-1.3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-1.3 Method of sale of commodities

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.3. Section IV (B), entitled Uniform Regulation for the Method of Sale of Commodities, of Handbook 130: Uniform Laws and Regulations **in the Areas of Legal Metrology and Engine Fuel Quality, 1998 2014** edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, excluding Section ~~2-20, 2.20.1,~~ is hereby incorporated by reference as requirements of the Indiana state department of health for the method of sale of commodities. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained ~~by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328.~~ **at the National Institute of Standards and Technology web site: <http://nist.gov/pml/wmd/pubs/hb130-14.cfm>.** (*Indiana State Department of Health; 410 IAC 12-1-1.3; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA*)

SECTION 4. 410 IAC 12-1-1.4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-1.4 Checking the net content of packaged goods

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3 IC 24-6

Sec. 1.4. (a) ~~The following are adopted by reference:~~

~~(1) NBS Handbook 133—Third Edition, Checking the Net Content of Packaged Goods, 1988 edition.~~

~~(2) NBS Handbook 133—Third Edition, Supplement, Checking the Net Content of Packaged Goods, 1990 edition.~~

~~(3) NBS Handbook 133—Third Edition, Supplement 2, Checking the Net Content of Packaged Goods, 1991 edition.~~

~~(4) NBS Handbook 133—Third Edition, Supplement 3, Checking the Net Content of Packaged Goods, 1992 edition.~~

~~(5) NBS Handbook 133—Third Edition, Supplement 4, Checking the Net Content of Packaged Goods, 1994 edition.~~

~~(b) All of the documents listed in subsection (a) are adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology, are hereby incorporated by reference as requirements of the Indiana state department of health for checking the net content of packaged goods. The incorporated documents are available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328.~~
Handbook 133: Checking the Net Contents of Packaged Goods, 2014 edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, is hereby incorporated by reference for the checking of the net content of packaged goods. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained at the National Institute of Standards and Technology web site: <http://www.nist.gov/pml/wmd/pubs/hb133-14.cfm>.
(Indiana State Department of Health; 410 IAC 12-1-1.4; emergency rule filed Sep 21, 1993, 2:00 p.m.: 17 IR 209; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

SECTION 5. 410 IAC 12-1-1.5 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-1.5 National type evaluation

Authority: IC 24-6-3-2

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 1.5. Section IV (F), entitled Uniform Regulation for National Type Evaluation, of Handbook 130: Uniform Laws and Regulations **in the Areas of Legal Metrology and Engine Fuel Quality**, 1998 **2014** edition, adopted by the National Conference on Weights and Measures, and published by the National Institute of Standards and Technology, is hereby incorporated by reference ~~as requirements of the Indiana state department of health~~ for the method of sale of commodities. The incorporated document is available for public view at the Indiana state department of health. Copies of the incorporated document may be obtained ~~by request mailed to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328.~~ **at the National Institute of Standards and Technology web site: <http://nist.gov/pml/wmd/pubs/hb130-14.cfm>.** *(Indiana State Department of Health; 410 IAC 12-1-1.5; filed Nov 25, 1998, 4:58 p.m.: 22 IR 1073; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)*

SECTION 6. 410 IAC 12-1-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-2 Poultry sold by weight

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 2. ~~(1)~~ **(a)** When poultry is sold or offered for sale as "dressed poultry", on a weight basis, such sale or offer of sale shall be exclusively upon the basis of net avoirdupois weight of the poultry in the condition in which it is ~~so~~ sold or offered for sale.

~~(2)~~ **(b)** Poultry means and includes chickens, turkeys, ducks, geese, pigeons, guineas, and any other kind of domesticated bird commercially processed and sold for human consumption. *(Indiana State*

Department of Health; Reg WM 2; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

SECTION 7. 410 IAC 12-1-5 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-5 Vehicle weighing restrictions

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 5. ~~All weighings~~ **Weighing** of vehicles shall be ~~made~~ **performed** with no person in or on the vehicle or on the scale platform. (*Indiana State Department of Health; Reg WM 5; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 175; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)*)

SECTION 8. 410 IAC 12-1-6 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-6 Weighmasters; appointment; certificates of weight

Authority: IC 24-6-3-16

Affected: IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 6. ~~The following provisions govern the appointment and prescribe the duties of weighmasters:~~

(a) Any county, city, town, corporation, individual, firm, association or institution in the State, ~~of Indiana,~~ wishing to have designated as State weighmasters one (1) or more of its employees or other suitable person or persons, shall forward written application therefor to the ~~Director of the State~~ division of weights and measures, Indiana state ~~Board~~ **department** of health, ~~1098 West Michigan Street, Indianapolis, Indiana,~~ upon such form as may be prescribed by the ~~said~~ division of weights and measures. ~~Such form will be furnished upon request.~~

(b) A certificate of appointment as a weighmaster ~~under the law of Indiana~~ will be issued only to an individual. ~~natural person, and each such~~ A certificate of appointment shall be posted at the location of the scale or scales designated in the application for its issuance. ~~the certificate.~~ Each certificate shall be open to inspection and may be revoked and canceled by the ~~Director of the said~~ division of weights and measures ~~after hearing, upon due notice to the appointee,~~ for incompetency, inaccuracy, or failure to perform the duties of such weighmaster. ~~in accordance with the law.~~ Each certificate of appointment must be returned to the ~~Director of the State~~ division of weights and measures for cancellation when the weighmaster has lost his employment at the location for which the certificate of appointment was issued. Unless sooner revoked or canceled, each certificate of appointment as State weighmaster shall automatically expire four (4) years after the date of its issuance.

(c) Each certificate of weight or measure, issued by a State weighmaster, shall include all of the following information to be clearly shown on each such certificate issued:

~~(I)~~ (1) The date of the weighing.

~~(II)~~ (2) The nature of the commodity weighed.

~~(III)~~ (3) The actual weight of the consignment; in the case of a certificate of weight of a commodity transported in a vehicle and not susceptible of being readily weighed by itself, both the actual gross weight and the actual tare weight must be shown, together with the net weight computed therefrom.

~~(IV)~~ (4) In any case where the weighmaster does not ascertain both gross and tare weights, the unused space therefore shall be out before certification.

- ~~(V)~~ (5) The name of the declared owner of the commodity.
- ~~(VI)~~ (6) The name of the purchaser of the commodity, if known.
- ~~(VII)~~ (7) The autographic signature of the weighmaster.
- (d) A copy of each certificate of weight shall be retained and be kept available for official inspection at the location designated in the application for certificate of appointment as State weighmaster, for a period of not less than **twelve** (12) months from the date of the weighing to which that certificate applies.
- (e) No certificate of weight shall be issued by a State weighmaster under any ~~one or more~~ of the following conditions:
 - ~~(I)~~ (1) When the scale at his disposal has not been officially approved by the ~~Director of the State~~ division of weights and measures ~~or one of his assistants, deputies or inspectors,~~ at the last previous official examination within a period of **twelve** (12) months preceding the date of weighing.
 - ~~(II)~~ (2) When the total length of wheelbase of the vehicle to be weighed exceeds the length of the platform of the scale at the weighmaster's disposal.
 - ~~(III)~~ (3) When the weight of the gross load exceeds the nominal or rated capacity of the scale at the weighmaster's disposal.
 - ~~(IV)~~ (4) When a vehicle is to be weighed, either empty or loaded, and any person is in or on the vehicle or on the scale platform at the time of weighing.
 - ~~(V)~~ (5) When the loaded or unloaded vehicle weighs less than **one thousand** (1,000) pounds, and the scale at the weighmaster's disposal is a vehicle scale.

(Indiana State Department of Health; Reg WM 6; filed Feb 23, 1950, 2:00 pm: Rules and Regs. 1951, p. 176; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA) NOTE: The current address of the State Division of Weights and Measures is: 1330 West Michigan Street, Indianapolis, Indiana, 46206

SECTION 9. 410 IAC 12-1-7 IS AMENDED TO READ AS FOLLOWS:

410 IAC 12-1-7 Schedule of civil penalties

Authority: IC 16-19-7-3; IC 24-6-3-2

Affected: IC 4-21.5-3-8; IC 16-19-7; IC 16-44-2; IC 16-44-3; IC 24-6

Sec. 7. (a) The Indiana state department of health may commence an action under IC 16-19-7-3, IC 24-6-1, IC 24-6-2, IC 24-6-3, IC 24-6-4, IC 24-6-5, IC 24-6-6, IC 4-21.5-3-8, and to levy civil penalties against a person who:

- (1) fails to comply with IC 24-6-3 or this rule; or
- (2) interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 24-6-3.

(b) A civil penalty in an amount in the appropriate range specified in subsection (d) may be sought for each day of each violation.

(c) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to public health.
- (2) The extent of deviation from statutory or regulatory requirements.
- (3) Degree of willfulness or negligence.
- (4) History of noncompliance.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

(d) Unless adjusted as provided for in subsection (e), all penalties shall be in accordance with the following schedule:

VIOLATION	CODE	RANGE OF PENALTY
Right of entry	IC 24-6-3-9	\$0 to \$1,000
Use of standard weights and measures	IC 24-6-3-10	\$0 to \$ 500
Use of false scales or measuring devices	IC 24-6-3-11	\$0 to \$1,000
Use of dry capacity measures	IC 24-6-3-12	\$0 to \$ 200
Standard weights and measures	IC 24-6-1-1	\$0 to \$ 200
Marking of containers	IC 24-6-6-2 IC 24-6-6-3 IC 24-6-6-4	\$0 to \$ 500
False representation of contents	IC 24-6-6-5	\$0 to \$1,000
Articles sold by weight or count	IC 24-6-4-1	\$0 to \$ 200
Inspection of devices	IC 24-6-3-7	\$0 to \$ 500
Commodity sold by count	IC 24-6-3-10	\$0 to \$ 200
Used containers	IC 24-6-6-6	\$0 to \$ 200
Failure to take tare at time of sale	IC 24-6-3-12	\$0 to \$1,000
Weighmaster duties	410 IAC 12-1-6	\$0 to \$1,000
Specification and tolerances of devices	410 IAC 12-1-1.1	\$0 to \$1,000

Packaging and labeling	410 IAC 12-1-1.2	\$0 to \$1,000
Method of sale of commodities	410 IAC 12-1-1.3	\$0 to \$1,000
Net content of packaged goods	410 IAC 12-1-1.4	\$0 to \$1,000
National type evaluation	410 IAC 12-1-1.5	\$0 to \$1,000
Use of illegal device	410 IAC 12-1-1.1	\$0 to \$1,000
Split draft weighing	410 IAC 12-1-4	\$0 to \$ 500
Person in vehicle during weighing	410 IAC 12-1-5	\$0 to \$500

(e) After determining the appropriate penalty based on the schedule in subsection (d), the Indiana state department of health may adjust the penalty to reflect a good faith effort to comply ~~to~~ **with** the following:

(1) Each individual penalty will be multiplied by the number of days the particular violation occurred. Penalties for violations occurring on two (2) consecutive inspections by the Indiana state department of health shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections. However, if the person found in violation has requested reinspection and has produced substantive evidence that the violation(s) have been corrected, the penalties shall be assessed for the period between initial discovery of violation and the receipt of request for reinspection.

(2) Penalties for all violations will be totaled and sought under one (1) cause of action.

~~(f) After filing an action pursuant to IC 4-21.5, and in an attempt to resolve violations of IC 24-6-1, IC 24-6-2, IC 24-6-3, IC 24-6-4, IC 24-6-5, IC 24-6-6, IC 4-21.5-3-8, and this rule without resort to a hearing, the Indiana state department of health may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated under the requirements and deadlines established in the agreed order. (Indiana State Department of Health; 410 IAC 12-1-7; filed Jun 18, 1991, 10:10 a.m.: 14 IR 1958; filed Dec 21, 2000, 2:21 p.m.: 24 IR 1343; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)~~